IN THE HIGH COURT OF DELHI AT NEW DELHI

FAO No.670/2003

National Insurance Company Ltd. ...Appellant
! through: Ms.Shantha Devi Raman, Adv.

VERSUS

$ Smt.Savita & Ors. .....Respondents
^ through: Mr.Baldev Singh, respondent No.6 in person

% **D**ATE OF DECISION: 29-03-2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether judgment should be reported in Digest?

: PRADEEP NANDRAJOG, J.

1. Only issue urged by the insurance company was that the driving licence of the driver was a fake licence and hence there was a violation of the policy of insurance by the insured. Hence, impugned award is liable to be set aside insofar it fixes liability on the appellant to satisfy the same.

2. Date of the accident is 23.4.1994. Evidence on record which has been discussed by the learned Judge, MACT is as per para 13 of the award. The said para reads as under:-

> "13. The next question arises as to from whom the petitioners are entitled to receive the said amount of compensation. The counsel for R-3 in this regard has contended that the driving licence of R-1 was not valid on the date of the accident and as such it was violation of the terms of the insurance policy and hence, the insurance company is not liable to pay the said compensation. The said contention on behalf of the R-3 is not tenable in view of the fact that the RW5 has categorically stated that the record of the driving licence is not traceable as per Mall Road Transport Authority vide Ex.RW5/1 and Ex.R3W2/A. The report of the Transport Authority of North East Zone, Loni Road categorically established that the driving licence of the R-1 was valid up to 01.07.2001 and the date of issue of the same was 02.07.1998. There is no record available prior to 02.07.1998 and also on the date of the accident. However, the RW-1 has specifically explained that the driving licence was issued on 18.07.1993 vide No.C-9/910717 renewed on 30.06.1998 and 19.06.1990. He has further deposed that his licence is a valid up to 01.07.2001. He has proved the copy of the driving licence as Ex.RW1/1. He has further deposed (illegible) the original driving licence was issued from Rajpur Road Licensing Authority and was renewed from the same Licensing Authority. Thereafter his driving licence was lost and the said Rajpur Road Licensing Authority issued the duplicate licence and it was renewed thereafter from Loni Road Licensing Authority on 02.07.1998. His evidence on record remained unrebutted and there is no reason to disbelive the RW1 so far as his driving licence is concerned. Hence, the contention on behalf of R-3 that R-1 was not having a valid driving licence on

> the date of the accident is hereby rejected and all the respondents are held jointly and vicariously liable to pay the compensation to the petitioners."

3. It was urged by learned counsel for the appellant and in support thereof, provisions of the M.V.Act 1988 (Section 14 and 15) were relied upon to make good the point that for a heavy transport vehicle, licence issued is valid for 2 years and therefore, in view of the dates of renewal, it is apparent that there was something amiss.

4. Issue is not that simple as projected by learned counsel for the appellant. Decision of Supreme Court reported as 2004 (3) SCC 297, *National Insurance Company Ltd. vs. Swaran Singh & Ors.* has dealt with the issue in detail. In para 14 of the judgment it has been held that onus is on the insurance company to prove that there has been a breach of a specified condition of the policy.

5. It is trite that a person would be duly licensed to drive a motor vehicle if he holds a driving licence issued by the competent authority and empowers the holder to drive a motor vehicle of the category which was being driven at the time of the accident.

6. However in para 49 of the decision in *Swaran Singh*'s case it was held that if insurance company has to avoid liability

under the policy it is required not only to show that the conditions laid down in Section 149(2)(a) or (b) are satisfied, but is further required to prove that there has been a breach on the part of the insured. Explaining the said legal position a little further, in para 51 it was held that the insurer is to prove a willful violation of the law by the assured. It was held that the insurance company must establish that the owner acted intentionally or *so recklessly as to denote that the assured did not care what the consequences of his act might be.*

7. Following observations from the decision of the Supreme Court in the report published as 1987 (2) SCC 654, *Skandia Insurance Company vs. Kokilaben* were extracted with approval. The same is reproduced as under:-

> "*14. Section 96(2)(b)(ii)* extends immunity to the insurance company if a breach is committed of the condition excluding driving by a named person or persons *or by any person who is not duly licensed,* or by any person who has been disqualified from holding or obtaining a driving licence during the period of disqualification. The expression 'breach' is of great significance. The dictionary meaning of 'breach' is 'infringement or violation of a promise or obligation' (see *Collins English Dictionary*). It is therefore abundantly clear that the insurer will have to establish that the insured is guilty of an infringement or violation of a promise that a person who is duly licensed will have to be in charge of the vehicle. The very concept of infringement or violation of the promise that the

> expression 'breach' carries within itself induces an inference that the violation or infringement on the part of the promisor must be a willful infringement or violation. If the insured is not at all at fault and has not done anything he should not have done or is not amiss in any respect how can it be conscientiously posited that he has committed a breach? It is only when the insured himself places the vehicle in charge of a person who does not hold a driving licence, that it can be said that he is 'guilty' of the breach of the promise that the vehicle will be driven by a licensed driver. It must be established by the insurance company that the breach was on the part of the insured and that it was insured who was guilty of violating the promise or infringement of the contract. Unless the insured is at fault and is guilty of a breach the insurer cannot escape from the obligation to indemnify the insured and successfully contend that he is exonerated having regard to the fact that the promisor (the insured) committed a breach of his promise. Not when some mishap occurs by some mischance. When the insured has done everything within his power inasmuch as he has engaged a licensed driver and has placed the vehicle in charge of a licensed driver, with the express or implied mandate to drive himself, it cannot be said that the insured is guilty of any breach."

8. In para 84 it was held that the insurance company has to establish that the vehicle was allowed consciously to be driven by the owner of the vehicle by a person not holding a valid licence.

9. In the summary of findings noted in para 110 it was observed that the question, whether the owner has taken reasonable care to find out as to whether the driving licence

produced by the driver does not fulfill the requirement of law will have to be determined in each case.

10. Examining the evidence in the instant case it is to be noted that the driver, Braham Prakash, was examined as RW-1. He stated that the driving licence issued to him was bearing No.C-9/8070056. It was issued on 18.7.1993. He further stated that initial number when driving licence was issued was C-9/910717. It was renewed on 30.6.1998 and 19.6.1990. He stated that the licence was valid till 1.7.2001.

11. R3W4, record keeper, from the Loni Road, Shahdara Transport Authority stated that the driving licence was renewed by the authority on the basis of the driver producing an earlier driving licence bearing No.C-910787. He further stated that the earlier licence was issued by the licensing authority having office at Mall Road and that record pertaining to the original licence was destroyed.

12. Submission made by learned counsel for the appellant was that according to the driver, original licence issued bore No.C-9/910717 and according to R3W4 original licence bore No.C-9/910787. Thus, the licence relied upon was a fake licence.

13. The owner of the vehicle was examined as R3W3. He stated that he had employed the driver 2-3 months prior to the accident and had seen the driving licence shown to him by the driver.

14. On the issue of the number of the original licence, whether it was C-9/910717 as stated by the driver or whether it was C-9/910787 as stated by R3W4, it is relevant to note that RW-5, an employee of the Road Transport Authority, Mall Road who had produced the driving licence verification report, Ex.RW-5/1, stated that the report related to driving licence No.C-910787 as also C-910717.

15. Ex.RW5/1 records that the record of either number was not traceable in the record of the Transport Authority.

16. Whatever may be the licence number, fact of the matter remains that on the basis of a driving licence issued on 18.7.1993 from the Mall Road office of the Road Transport Authority, authorities at Loni Road office renewed the licence. This shows, if not more, that the driver had produced a driving licence before the authorities at Loni Road and based thereon, the authority had renewed the licence.

17. If the authority at Loni Road could not detect that the

licence was a fake licence, assuming it was so, wherefrom could the owner of the vehicle assume that it was a fake licence?

18. If the competent authority could be misled, so could be the owner of the vehicle. With the advancement of technology, it has become impossible to distinguish between original and the fake.

19. Law does not enjoin upon the employer to verify the authenticity of the licence produced by the person seeking employment as a driver. If, on the face of it, the licence produced looks genuine, it would be sufficient discharge of duty of care by the owner to verify the qualification of the person proposed to be employed as a driver.

20. In the teeth of the deposition of the owner of the vehicle that he saw the driving licence produced by the driver, to whom employment was given 2 to 3 months prior to the date of the accident, the assured has sufficiently discharges the onus on him to establish that he acted with reasonable care.

21. In this connection, it would be relevant to note that the owner who examined himself as R3W3 was not cross examined by the insurance company. No questions were put to

him in relation to his statement that he had seen the driving licence possessed by the driver.

22. Fact of the destruction of the original record pertaining to the licence issued in the year 1993 cannot be used against the owner of the vehicle.

23. Contention urged that a heavy duty vehicle licence is valid for only 2 years and statement of the driver pertaining to its renewal shows something hanky panky inasmuch as, as per the statement of the driver, licence was renewed beyond 2 years needs to be noted and rejected for the simple reason under the M.V.Act 1988 an expired licence can be renewed within up to 5 years of date of expiry with the qualification that it would be an effective licence with effect from the date of renewal.

24. The possibility of the driver renewing the licence renewed after 30 days of the expiry but within 5 years thereof cannot be ruled out. In any case, accident in question took place on 23.4.1994. Licence issued for the first time as relied upon was issued on 18.7.1993. Said licence would be in any case valid and effective for a period of 2 years.

25. I do not find any infirmity in the impugned award.

26. The appeal is dismissed.

27. No costs.

March 29, 2007 **PRADEEP NANDRAJOG, J.**
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